

C. An organ from those listed in the Markush group of Claim 5 or Claim 6.

Applicants elect, with traverse, (A) macrophages as a cell species (Claims 1-20 read on this species), (B) N,N'-diacylcystine as a substance from those listed in the Markush group of Claim 3 (Claims 1-20 read on this species), and (C) corneal epithelium as an organ from those listed in the Markush group of Claim 5 or Claim 6 (Claims 1-20 read on this species) for further prosecution.

Applicants make no statement regarding the patentable distinctness of the species, but note that for restriction to be proper, there must be a patentable difference between the species as claimed. MPEP §808.01(a). Applicants respectfully traverse the Election of Species Requirement on the grounds that the Office has not provided any reasons or examples to support a conclusion that the species are indeed patentably distinct. Accordingly, Applicants respectfully submit that the restriction is improper, and Applicants' election of species is for examination purposes only.

Moreover, the MPEP in §803 states as follows:

"If the search and examination of an entire application can be made without a serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions."

Applicants respectfully submit that a search of all the claims would not impose a serious burden on the Office.

Finally, with respect to the elected species, Applicants respectfully submit that, should the elected species be found allowable, the Office should expand its search to the non-elected species.

Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the Election of Species Requirement. Withdrawal of the Election of Species Requirement is respectfully requested.

Applicants submit that the present application is in condition for examination on the merits. Early notification to this effect is respectfully requested.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.
Norman F. Oblon



Vincent K. Shier, Ph.D.
Registration No. 50,552

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413-2220
(OSMMN 08/03)
NFO/VKS